IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPEAL FROM THE APPELLEE TO THE BOARD
OF PATENT APPEALS AND INTERFERENCES

Appellant: Siew-Hong Yang-Huffman et al.   Confirmation No.: 5395

Application Serial No.:   10/649,303

Filed: August 27, 2003

Title: SYSTEM AND METHOD OF NETWORK FAULT MONITORING

Group Art Unit: 2141

Appellee: SHINGLES, Kristie D

Docket No.:   200310177-1

MAIL STOP: APPEAL BRIEF PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

AMENDED APPEAL BRIEF

Appellants have appealed to the Board of Patent Appeals and Interferences from the decision of the Examiner mailed January 2, 2008, finally rejecting Claims 1-30. Appellants filed an Appeal Brief on March 17, 2008. A Notification of Non-Compliant Appeal Brief was mailed April 29, 2008. Appellants respectfully submit herewith this Amended Appeal Brief.

In the Notice of Non-Compliant Appeal Brief mailed April 29, 2008, the alleged non-compliance appears to be that the summary of the claimed subject matter portion of the Appeal Brief filed on March 14, 2008, did not contain a concise explanation of the subject matter defined in the claims. Appellants disagree.

According to 37 C.F.R. 41.37(c), "a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters." Appellants contend that the Appeal Brief filed on March 14, 2008, fully complied with the requirements of 37 C.F.R. 41.37(c). Neither 37 C.F.R. 41.37(c) nor the M.P.E.P. appear to restrict citing to multiple pages, lines and figures at the end of each claim. To the contrary, M.P.E.P. § 1205.2 only indicates that the summary of the claimed subject matter "is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application." Appellants respectfully submit that Appellants' concise explanation provided in the Appeal Brief filed on March 14, 2008, fully complies with the requirements of 37 C.F.R. 41.37(c) and provides the desired notice of where the claimed subject matter is supported/described in the application.

In addition, the Appellants contend that they have already provided a concise explanation and support from the specification and drawings for the "means" claims. As noted in M.P.E.P. § 1205.02, for each independent claim and for each dependent claim argued separately, every "means" claim must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page an line number. The Appellants contend that they have already provided a concise explanation and support from the specification and drawings for the independent claim in means plus function format, namely, independent Claim 20. Also, because the Appellants have not argued separately dependent Claims 21-23, the Appellee's indication of non-compliance with regard to those claims is improper.

Despite the above, the Appellants submit this Amended Appeal Brief including only a replacement Summary of Claimed Subject Matter section, which is authorized and encouraged by M.P.E.P. § 1205.03. Line number references noted below have been determined by counting only the lines of text on the pages of the application.

SUMMARY OF CLAIMED SUBJECT MATTER

Embodiments of the present invention as defined by independent Claim 1 are directed toward a system (Pg. 3, lines 24-26, 29-30; Pg. 7, lines 26-31; Pg. 8, lines 1-9, and Fig. 1, Ref. No. 10) for monitoring network condition, comprising a policy server (Pg. 4, lines 4-6, 10-15, 18-19, 25-28; Pg. 5, lines 4-8, 14-18; Pg. 6, lines 29-30; Pg. 7, lines 5-7, 18-21, 23-25; Fig. 1, Ref. No. 12) operable to generate collection configuration information based on network topology information and at least one collection policy (Pg. 3, lines 29-31; Pg. 4, lines 1-7; Pg. 5, lines 14-32; Pg. 6, lines 1-14, 29-30; Fig. 1, Ref. No. 14); and at least one collector (Pg. 4, lines 25-32; Pg. 7, lines 1-13, 17-18; Fig. 1, Ref. No. 22) operable to access the collection configuration information and operable to poll a subset of network nodes (Pg. 4, lines 26-32; Pg. 5, lines 16-21; Fig. 1, Ref. No. 26) requiring monitoring according to the collection configuration information.

Embodiments of the present invention as defined by independent Claim 10 are directed toward a method for monitoring a network, comprising receiving network topology information indicating a list of network nodes to monitor (Pg. 4, lines 14-15; Pg. 5, lines 4-8; Fig. 2, Ref. No. 30); receiving a definition of a subset of the list of network nodes from which to collect data and a definition of the type of data to collect (Pg. 5, lines 14-18; Fig. 2, Ref. Nos. 32, 33); generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data (Pg. 5, lines 29-30; Fig. 2, Ref. No. 34); and collecting data from the subset of network nodes according to the collection configuration information (Pg. 7, lines 12-13; Fig. 2, Ref. No. 38).

Embodiments of the present invention as defined by independent Claim 20 are directed toward a system for network fault monitoring, comprising means for receiving network topology information (Pg. 4, lines 4-6, 10-22, 25-28; Pg. 5, lines 4-8, 14-18; Pg. 6, lines 29-30; Pg. 7, lines 5-7, 18-21, 23-25; Fig. 1, Ref. No. 12, 18); means for receiving a definition of a subset of network nodes from which to collect data and a definition of the type of data to collect (Pg. 3, lines 29-30; Pg. 4, lines 1-15, 18-19, 25-28; Pg. 5, lines 4-8, 14-32; Pg. 6, lines 1-14, 29-30; Pg. 7, lines 5-7, 18-21, 23-25; Fig. 1, Ref. Nos. 12, 14, 16); means for generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data (Pg. 4, lines 4-6, 10-15, 18-19, 25-28; Pg. 5, lines 4-8, 14-18; Pg. 6, lines 29-30; Pg. 7, lines 5-7, 18-21, 23-25; Fig. 1, Ref. No. 12);

and means for polling the subset of network nodes to collect data according to the collection configuration information (Pg. 4, lines 25-32; Pg. 7, lines 1-13, 17-18; Fig. 1, Ref. No. 22).

Embodiments of the present invention as defined by independent Claim 24 are directed toward a method for network fault monitoring, comprising accessing a collection policy specifying criteria for collecting data from a plurality of network nodes (Pg. 5, lines 14-16; Fig. 2, Ref. Nos. 32, 33); and filtering the plurality of network nodes to determine a subset of the plurality of network nodes for fault monitoring based on the collection policy (Pg. 5, lines 16-18).

CONCLUSION

Appellants have demonstrated that the present invention as claimed is clearly distinguishable over the art cited of record. Therefore, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the final rejection of the Examiner.

Although no fee is believed due with this Amended Appeal Brief, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 08-2025 of Hewlett Packard Company.

Respectfully submitted,

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Date: May 28, 2008

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011-33-476-14-4632